ORIGINAL

Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
The Development of Operational,	)	
Technical and Spectrum Requirements	)	
For Meeting Federal, State and Local	)	WT Docket No. 96-86
Public Safety Agency Communication	)	
Requirements Through the Year 2010	)	
	)	
Establishment of Rules and Requirements	)	
For Priority Access Service	)	

COMMENTS OF
PRIMECO PERSONAL COMMUNICATIONS, L.P.

PrimeCo Personal Communications, L.P. ("PrimeCo"), which provides broadband personal communications services ("PCS") in 11 Major Trading Areas ("MTAs"), submits these comments in response to the *Second Notice of Proposed Rulemaking,* FCC 97-373 (Oct. 24, 1997)("*Second Notice*"). For the reasons discussed herein, adoption of priority access rules is unnecessary and, in any event, premature. Accordingly, the Commission should *not* impose priority access requirements at this time.

I. Public Safety Agencies Should Have No Need to Access Commercial Spectrum With 24 MHz of Additional Spectrum

The public safety community states it needs a priority access system because during emergencies it has, at times, faced congestion when using commercial cellular networks. Public safety agencies have turned to commercial CMRS networks to date because they have encountered congestion *on their own frequencies* and because very few of their channels can be accessed by other public safety agencies.

However, the Commission is about to remedy this problem by allocating an additional 24 MHz of clear spectrum to the public safety community and by dedicating a "significant amount" of this spectrum "solely for interoperability communications."[1] This is a sizable spectrum allocation; indeed, it is the near equivalent of a current cellular license.[2] By way of comparison, if public safety entities were to build a traditional, analog cellular system with this allocation, they would have the capacity to process millions of emergency and non-emergency public safety calls every day. Moreover, if public safety entities instead built a digital system, they could handle at least three times as many calls. Public safety officials will probably not choose to build a cellular-like system, but even a digital dispatch system with 24 MHz of spectrum will provide ample capacity for public safety communications needs. Obviously, public safety agencies will have no need to seek access to a portion of the commercial networks if they construct an efficiently designed, stand-alone network operating on 24 MHz of spectrum.

Public safety agencies, for reasons not entirely clear, are reluctant to share spectrum amongst themselves. Indeed, even though the public safety community represents that interoperability is "essential for the protection of life and property,"[3] it recommends that only

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1 *Second Notice* at ¶ 44.

2 Cellular licenses have a 25 MHz allocation of spectrum. With this allocation, they routinely provide service to more than 100,000 subscribers in metropolitan markets and to more than 40 million subscribers nationwide.

3 Final Report of the Public Safety Wireless Advisory Committee, at ¶ 4.3.1(Sept. 11, 1996)("PSWAC Final Report"). *See also id.* Executive Summary, at 2 "[U]nless immediate measures are taken to . . . promote interoperability, [public safety] will not be (continued...)

10% of the newly-available spectrum be allocated for interoperability purposes. This recommendation makes no sense, especially given the scarcity (and corresponding value) of radio spectrum. Thus, adoption of this recommendation would effectively preserve the *status quo* — as well as its attendant problems. As the Commission itself has stated, it would "perpetuate the current balkanization between agencies and jurisdictions that exists today in public safety communications." Instead, a larger percentage of public safety's new allocation should be dedicated for interoperability purposes.[4]

In PrimeCo's view, the Commission must also adopt policies to change how public safety agencies *use* their spectrum. Public safety agencies, as the Commission itself has

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[3] (...continued)
able to adequately discharge their obligation to protect life and property in a safe, efficient, and cost, effective manner."; at ¶ 4.3.1 ("Interoperability is generally accepted to be not only desirable, but essential for the protection of life and property."); *Second Notice* at ¶ 27 ("[T]his present inability of public safety agencies to communicate with each other is one of the most critical deficiencies in today's public safety communications.").

[4] *Second Notice* at ¶ 15. Moreover, practical considerations dictate that the Commission err on the side of over allocating spectrum for interoperability purposes. In making its allocation decisions, the Commission is necessarily limited to estimating need for each type of use (interoperability vs. general use). Given public safety's statement that "[i]nteroperability is . . . essential for the protection of life and property," the Commission should consider now the ease in which it can make reallocation decisions in the future should it later be determined that too much or too little spectrum has been allocated for interoperability purposes. It would be a relatively straightforward matter for the Commission to reallocate interoperability channels to general use channels if it is later determined that too much spectrum has been allocated for interoperability purposes. In contrast, few (if any) solutions may be available if it is later determined that too *little* spectrum has been allocated for interoperability. With the considerable difficulty in reallocating frequencies in use (*see Second Notice* at ¶ 43), the only practical alternative would be to seek additional spectrum to support interoperability purposes.

noted, do not make efficient use of the spectrum allocated to them.[5] The reason for this is apparent. Public safety agencies have received free spectrum and they have had no incentive to use it efficiently.[6] Moreover and inexplicably, the Commission has not in the past imposed any minimal efficiency requirements on public safety frequencies.[7]

This too must change; spectrum is too scarce and valuable. Thus, if one of the goals in this proceeding is the "efficient and effective" use of the 749-806 MHz band,[8] the Commission should give the public safety community incentive to use some of the same spectrum-efficient technologies used by the telecommunications industry and businesses in their private networks, including digital transmission and trunking capabilities.[9]

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5 *See Second Notice* at ¶ 17.

6 *Id.* at ¶ 17 ("[P]ublic safety agencies currently are hampered by inefficient use of most of the[ir] spectrum . . . because of a lack of the proper incentives for its efficient use."); at ¶ 7 ("[W]e need to ensure that this spectrum is used effectively and that the necessary incentives exist to provide nationwide public safety interoperability.").

7 *See, e.g., id.* at ¶ 102.

8 *See id.* at ¶¶ 7, 21, and 100.

9 In this regard, the PSWAC itself has noted that "digital transmission and advanced modulation techniques permit users to increase the amount of traffic that can be transmitted over any given amount of spectrum" and that deployment of such technologies "would minimize the requirements for new spectrum." PSWAC Final Report at ¶ 4.2.39. *See also id.* at ¶ 4.2.42 ("Digital technology will be the key technology for the future . . . Digital is essential to data transmission. Digital appears to be superior for secure communications . . . ."); at ¶ 4.2.43 ("Trunking will become increasingly prevalent . . . .").

A. Dramatic Increases In CMRS Capacity Will Also Likely Render a New Priority Access System Unnecessary

Public safety agencies should not need to access commercial CMRS systems if they efficiently use the 24 MHz of additional spectrum being allocated to them. However, even if they still desire to use commercial systems, it has not been demonstrated that needed capacity will *not* be made available — on a wholly voluntary basis.

PrimeCo recognizes that public safety agencies in the past have faced some congestion on cellular networks. However, this capacity limitation is changing rapidly and dramatically. Cellular carriers are upgrading their networks from analog to digital technologies, a technology change which improves call quality and expands system capacity. Just as important, CMRS providers like PrimeCo are rapidly building entirely new, state-of-the-art digital networks. In many markets today, there are now five facilities-based broadband CMRS providers; this number will increase as C, D, E, and F block licensees build out their new systems. Thus, even without priority access, there should be ample spectrum available for use by public safety agencies during emergencies — to the extent public safety entities may still require use of commercial systems.[10]

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[10] Under no circumstances should the Commission entertain the argument that public safety agencies are entitled to *preemptive* access — whereby calls in progress would be terminated. In emergencies, the public also has a right and the clear need to communicate with others.

B. Priority Access May Not Be a Solution In Any Event

In addition, even the public safety community concedes that a new commercial priority access system may "not likely meet all [of its] requirements."[11] The inherent deficiencies of commercial networks recited in the PSWAC Report (such as inadequate reliability and command and control characteristics)[12] are not surprising, given that commercial networks have been designed for public traffic, while "Public Safety users have operational requirements that differ substantially from other classes of wireless users."[13]

There are other significant issues which must be addressed before any priority access system is adopted or deployed.[14] Importantly, priority access does not guarantee call completion — and may, in fact, actually make call completion more difficult.[15] A priority access system obviously has little value if the person given priority access cannot complete the call. Moreover, an illicit market for priority access codes could develop and, depending on the scope of this market, this development could render useless any commercial priority access system. Other forms of abuse would also likely occur.

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11 PSWAC Final Report at ¶ 4.3.25.

12 *Id.* at ¶ 4.3.7.

13 *Id.* at ¶ 1.23.

14 For example, disaster relief efforts may cross CMRS system boundaries, necessitating standards for intersystem call delivery and hand-off. In addition, there is no industry standard defined in IS-95A to support priority access service.

15 Obstacles to call completion include blocking in landline networks and insufficient channel capacity in the cell serving the called party — a situation that may be aggravated by priority access (because the network is being used predominately to originate rather than terminate calls).

These points merely reaffirm the obvious: the only real solution for the congestion/interoperability problem now faced by the public safety community is for the community to use its new spectrum effectively and efficiently (and, preferably, for it to begin using its existing frequencies more efficiently as well).

II. Market Forces Should Be Given an Opportunity to Work

The Commission has noted in this proceeding that "it is sound public policy to pursue market solutions to communications needs because . . . reliance on market forces ensures that customer demands are met efficiently and quickly through the provision of cost-based services."[16] With one exception noted below, market forces will prompt the CMRS industry to respond to market demand by developing and offering priority access capabilities that meet the needs of the public safety community. CMRS providers will readily provide a new service if they believe that commercial interest exists.[17] Indeed, given the number of licensees in each market, public safety agencies should have considerable choices in capabilities and prices. Moreover, even without priority access, wireless carriers throughout the country have undertaken public safety activities utilizing their wireless networks and equipment.

The one major exception is liability exposure. CMRS providers understandably will be reluctant to provide priority access to public safety agencies if, as a result of their efforts, they face nuisance lawsuits alleging that they are in contravention of Section 202(a) of the

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16 *Second Notice* at ¶ 210.

17 There is simply no basis for the assertion by the Defense Information Systems Agency ("DISA") that the "[i]ndustry will not activate [priority access] without FCC rules." DISA Ex Parte (Nov. 4, 1996). *See also* DISA Ex Parte (Feb. 25, 1997).

Communications Act, which prohibits unreasonable discrimination or preferences.[18] Consequently, the market will not be able to fully respond to the needs of the public safety community unless the Commission resolves the liability question raised by public safety access.

The Commission's proposed solution — shifting the burden of proof to the plaintiff — is inadequate. Carriers face substantial costs in defending even frivolous lawsuits. Thus, if economic barriers to the provision of priority access are to be removed, the Commission must take steps to eliminate the significant threat of lawsuits. At a minimum, the Commission should clarify that carriers are not liable if public safety personnel misuse their priority access privileges or if hackers impermissibly use the system. PrimeCo submits that the necessary immunity from liability can best be achieved by exercise of the Commission's forbearance authority under Section 10 of the Communications Act.[19]

III. Rather Than Impose Priority Access, the Commission Should Instead Encourage Carriers to Add Capacity and to Expand the Footprint of their Networks

This proceeding is about inadequate capacity. The public safety community, largely because of its use of antiquated technologies and its historic refusal to share frequencies between

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[18] *See Second Notice* at ¶¶ 19699. The alternative — having public safety agencies hold carriers harmless for such lawsuits — is not viable because the costs involved in such an approach would almost certainly make priority access unaffordable for most public agencies.

[19] *See Second Notice* at ¶¶ 203-07. Here, too, the Commission's proposal is too narrow. Section 202(a) should be removed for *all* CMRS activities. Section 202(a) was enacted for monopoly markets; protection from discrimination is not needed for markets such as CMRS, which are becoming intensely competitive. Besides, complete forbearance of Section 202(a) could very well incent CMRS providers to install priority access capabilities for their commercial services, which could, in turn, reduce dramatically the cost of providing such capabilities to public safety agencies.

agencies, finds its current frequencies congested. As a result, during emergencies, it has found it necessary to use cellular networks, which occasionally have been congested as well.

The Commission is addressing the first problem by allocating a considerable amount of new spectrum to the public safety community. The second problem — congestion of cellular capacity — can be addressed by encouraging CMRS providers to add capacity to their systems and expand the size of their footprints. The dollars invested would benefit the public safety community and the public at large — which would enjoy more services in more areas at lower prices (because of the resulting increase in competition).

PrimeCo has been doing its part by building state-of-the-art CMRS networks so consumers have more choices at lower prices. PrimeCo's building effort has been slowed because its finite resources are continually being diverted to meet new government mandates — including CALEA, 911/E911, and number portability. Now is *not* the time to impose a new government mandate with respect to priority access, a new mandate which would divert further resources from wireless deployment efforts without justification.[20]

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[20] Finally, as a last note, perhaps the most significant obstacle PrimeCo faces in expanding its new network are the delays and costs associated with obtaining new cell sites. If the Commission truly wants to facilitate the prompt expansion of CMRS networks and promote the availability of wireless technology for public safety purposes, it should resolve promptly some of the important preemption proceedings pending before the Commission. *See, e.g., In the Matter of Roseville, Minnesota,* CWD-96-16; *Petition for Declaratory Ruling of the Cellular Telecommunications Ind. Ass'n*, FCC 97-264 DA 96-2140; *Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934, NPRM*, WT Docket No. 97-192.

Conclusion

PrimeCo is willing and able to assist public safety and has done so on a voluntary basis. By way of a single example, in response to a tornado this summer which ravaged the town of Jarrell, Texas, PrimeCo quickly installed a temporary "cell on wheels" and donated handsets to local officials so they could coordinate emergency aid to Jarrell and surrounding areas. PrimeCo has undertaken other public safety efforts in its other markets. However, as discussed herein, the case for mandated priority access has simply *not* been established. And just as clearly, the case has *not* been made that an efficient and cost-effective commercial priority access system will best be achieved by more government regulation rather than by reliance on market forces. PrimeCo submits that an efficient public safety spectrum allocation, coupled with voluntary efforts by the wireless industry, will fully satisfy legitimate needs in this area. Priority access should not be mandated at this time.

Respectfully submitted,

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